

**REMARKS**

Claims 1-13 are pending in the above-identified application. Claims 1-13 were rejected and objected to. With this amendment, Claim 1 was amended. Accordingly, claims 1-13 are at issue in the above-identified application.

**Objection To Specification**

The Examiner stated that the amendment filed on November 3, 2003 was objected to under 35 U.S.C. § 132 because the amendment introduced new matter into the disclosure.

Applicants have amended claim 1 to recite a range of *not less than 0.14 cc and not larger than 0.21 cc per 1 Ah of the cell capacity*. Applicants maintain that this range is supported in the claims and that withdrawal of this objection is respectfully requested.

**35 U.S.C. § 103 Obviousness Rejection of Claims**

Claims 1, 3, 4, 12 and 13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Goodenough et al.* (U.S. Patent No. 5,910,382) in view of JP 2646657. Claims 1-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Barker et al.* (U.S. 2003/0129492) in view of JP 2646657. Claims 2 and 5-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Goodenough et al.* in view of JP 2646657 as applied to claim 1 above, and further in view of *Barker et al.* (U.S. Patent No. 5,871,866). Applicants respectfully traverse these rejections. Withdrawal of these rejections are respectfully requested.

Claim 1 recites a non-aqueous electrolyte secondary cell comprising a cathode employing a cathode active material containing a compound of the olivinic structure having the formula  $Li_xFe_{1-y}M_yPO_4$ , where M is at least one selected from the group consisting of Zn, Al, Ga, Mg, and B, with  $0.05 \leq x \leq 1.2$  and  $0 \leq y \leq 0.8$ , an anode, and an electrolyte solution, said cathode, anode and the electrolyte solution being housed in a container; wherein the amount of said electrolyte

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solution is adjusted to provide a void in said container of *not less than 0.14 cc* and not larger than *0.21 cc per 1Ah* of the cell capacity. Neither *Goodenough et al.* or *Barker et al.*, either alone or in combination, teach or disclose a cathode active material having an element M selected from the group consisting of *Zn, Al, Ga, Mg, and B*. Additionally, there is no suggestion, in either of the cited references to use an element M selected from the group consisting of *Zn, Al, Ga, Mg, and B* in a cathode active material. Furthermore, neither *Goodenough et al.* or JP 2646657, either alone or in combination, teach or disclose an amount of electrolyte solution in the container adjusted to provide a void in the container of *not less than 0.14 cc and not larger than 0.21 cc per 1Ah* of the cell capacity. Therefore, for the above cited reasons, Applicants respectfully request withdrawal of this rejection.

In view of the foregoing, Applicant submits that the application is in condition for allowance. Notice to that effect is requested.

Respectfully submitted,

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